IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 768 OF 1992

Union of India ..Appellants

versus

M/s. Kailas & Co., Manmad ..Respondents

AND

FIRST APPEAL NO.774 OF 1992

Union of India ..Appellants

versus

M/s. Eknath Khemchand & Co.

Yeola, Dist: Nasik ..Respondents

AND

FIRST APPEAL NO. 788 OF 1992

Union of India ..Appellants

versus

Rameshwar Lalchand Attal ..Respondent

AND

FIRST APPEAL NO. 1019 OF 1992

Union of India ..Appellants

versus

M/s. Bhivraj Kanmal ..Respondent

AND

FIRST APPEAL NO. 1136 OF 1992

Union of India ..Appellants

versus

M/s. Eknath Khemchand ..Respondents

Mr. A. N. Samant for the Appellants in all the Appeals.

None for the Respondents in all the Appeals.

CORAM : D. G. DESHPANDE,J.

DATE : 6TH MAY, 2005

ORAL ORDER :

1. Heard Mr. A. N. Samant for the appellants. Nobody is appearing for the Respondents, though they are served.

2. By these Appeals the Union of India has challenged the order of the Tribunal awarding compensation to the respondents. All the appeals are pending for the last 13 years.

3. Mr. Samant raised only three contentions. Firstly, according to him the claim was filed by the original claimants against two Railways e.g. in First Appeal No. 768 of 1992 the claim was preferred

by the claimants - respondents against General Manager, Central Railway, and General Manager Southern Railway, and the Tribunal passed an award against both the Railways. Therefore, according to Mr. Samant, there can be liability only of one railway and not of both the railways.

4. Secondly, he contended that in all the Appeals the RRs were issued by the Railway as *"said to contain".*

5. Thirdly, he contended that the Tribunal awarded interest at the rate of 12% per annum in some appeals and at the rate of 10% per annum in some appeals, and according to him it should be 9% per annum in view of the judgment of this court reported in **2005 (1) Mh. L. J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is to be reduced to 9% per annum.

6. Therefore, he contended that, firstly, the appeals should be allowed so far as claim on merits is concerned, or alternatively one railway is liable to pay, and that interest rate should be reduced to

9% per annum.

7. Out of the three submissions made by Mr. Samant, the first and third submissions are required to be accepted and the second submission is required to be rejected. If at all there is liability of the Union of India, then Decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India I have accepted this contention, therefore impugned judgment will have to be maintained against General Manager, Central Railway only and order against other Railways will have to be set aside.

8. So far as contention of Mr. Samant of RR with the endorsement *"said to contain" ,* the same is required to be rejected. I am referring the facts in First Appeal No. 1136 of 1992. In that case claimants had entrusted two consignments each containing 381 bags of onions booked under Invoice No.1, RR No. 737957 dated 1.4.1878 and Invoice No. 25, RR No. 738037 dated 26.5.1978 from Yeola to Salt Cotaurs. The goods were to reach destination within normal period of six days. First consignment took about 18 days and it was delivered on 18.4.1978 and second consignment took about 21 days and was delivered on 16.6.1978. As a result the consignments were damaged and therefore claim petitions or suits

came to be filed. The Tribunal framed as many as 10 issues but the issue regarding RRs *"said to contain"* was not at all framed. The Tribunal found that there was total negligence and inordinate delay in delivery of consignment by the Railways. So far as compensation is concerned, the Railways had issued damage certificate in both the matters. It appears from the damage certificate that actual calculations were made before issuing damage certificate. So far as Invoice No.1 was concerned, it was found that the on percentage basis, 150.3 bags were damaged and so far as Invoice No. 25 is concerned, on percentage basis 75.4 bags were damaged. The claimants had adduced specific evidence to the effect that each bag was 40 kgs. in weight. He therefore claimed Rs.50/- per quintal for the consignment concerning invoice No.1 and Rs.120/- per quintal for consignment concerning invoice No.25.

9. Railways can file defence of *"said to contain"* when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes

secondary. Both the damage certificate show that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under both the invoices, the Tribunal has accepted that weight of the each bag was 40 kgs. therefore, in the circumstances the defence of *"said to contain"* is not available to the appellants.

10. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

11. In the result, I pass the following order:

ORDER

. All the appeals are partly allowed.

. In all the Appeals, liability of payment will be of the General Manager. Central Railway only and not of other Railways.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs of all these Appeals.

. All the appeals disposed of along with Civil Applications, if any.

6.05.2005 (D.G. DESHPANDE, J.)